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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,947	10/21/2004	Matthias Burian	GRA278-820736	8792

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WOLF BLOCK SCHORR AND SOLIS-COHEN LLP  
250 PARK AVENUE  
NEW YORK, NY 10177

EXAMINER
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MANOHARAN, VIRGINIA

ART UNIT	PAPER NUMBER
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1797

NOTIFICATION DATE	DELIVERY MODE
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07/17/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO@WOLFBLOCK.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/511,947	<b>Applicant(s)</b> BURIAN ET AL.	
	<b>Examiner</b> Virginia Manoharan	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/21/04</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Applicants' election of Group I, claims 1-5 in the reply filed on May 9, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors, e.g., typographical, grammar, idiomatic, syntax and etc. Applicants' cooperations are requested in correcting any errors of which applicants may become aware in the specification.

The abstract of the disclosure is objected to because of the inclusion of legal phraseology often used in patent claims such as "means" in lines 11-12 2. Correction is required. See MPEP § 608.01(b). Also "(Fig.1)" in the should be deleted as being unnecessary.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "3" at page 8, line 30 and "22" at page 10, line 17 have both been used to designate piston. [Applicants should further check that different numbers do not refer to the same part; and vice versa, i.e., different parts are not being referred to by the same number]. Also, Fig. 1 heading should be added to the drawing.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The disclosure is objected to because of the following informalities:

That this application is a 371 of PCT/AT03/00118 filed 04/23/2003 should be mentioned at the first page of the specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a). It is unclear whether the "evaporated amount of liquid" is referring to liquid that already evaporated or vaporized, or to the liquid that remains after evaporation.

b). The claims or at least part of the claims are recited in passive rather than active steps. Reciting e.g., evaporating and subsequently condensing in lieu of "is evaporated and subsequently condensed" is better. See further e.g., "by the aid of a lifting drive" in claim 2.

c). The claimed “in particular” in claim 1; “particularly” in claim 1; “preferably” in claim 1; and “preferably about” in claim 5 all fail to ascertain the claimed invention with precision.

d). Claim 3 recites the limitation “the measuring procedure” in line 2. There is insufficient antecedent basis for this limitation in the claim.

e). The terms “in a manner known per se” in claim and “ and “chosen” in claim 5 should be deleted as being superfluous.

f). The inconsistent used of terminology in the claims is improper. For example: “sample amount of the liquid” in claim 1, line 2, as opposed to “the sample” in claim 5, line 2.

g). The preamble of claim1 recites “ A method for recording boiling curve of liquids..”, however the body of the claim does not mention the boiling curve of liquids.

h). It is unclear what constitute the define identical temperature level recited in claim 1 as it is not specified in the claims. It is also unclear as to what is meant by the claimed “pressed at the same ” in claim 2.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3039487 or Peter et al (4,528,635) in view of Abaev et al (6,581,443).

Either DE '487 or Peter et al discloses substantially the method/process as claimed. See the abstracts and the drawings. The method of DE '487 or Peter differs from the claimed invention in that claim 1, for example, recites "...that the filling means and a condensate collection chamber are brought to a defined, and preferably identical, temperature level..". However, said difference does not constitute a patentable distinction inasmuch as such method is conventionally done in the art as taught in col. 3, lines 35-50 of the Abaev reference. To incorporate Abaev's teaching to the method of DE'487 or Peter would have been obvious to one of ordinary skill in the art inasmuch as all the above references are directed to the same processing environment, i.e., to automatic control of a distillation process for determining the boiling curves of liquids.

Claims 2-3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a). Hook discloses an automatic method for controlling and recording the distillation of a liquid.
- b). Goolsby et al discloses a method for automatically conducting distillation analysis of liquids.
- c). Audeh et al discloses a method for generating TBP distillation curves for crude petroleum oils.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to V. Manoharan whose telephone number is (571) 272-1450.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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/Virginia Manoharan/  
Primary Examiner, Art Unit 1797